APPEAL NO. 041163
FILED JULY 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A consolidated contested case hearing (CCH) was held on April 22, 2004. The hearing officer resolved the disputed issues by deciding: (1) the _____, injury is a producing cause of the claimant's neck condition after (alleged date of injury); (2) that the appellant/cross-respondent (claimant herein) did not sustain a compensable injury on (alleged date of injury); (3) that the date of the alleged injury is (alleged date of injury); (4) that respondent 2 (carrier 2 herein) is not relieved of liability under Section 409.002 because the claimant did not fail to timely notify her employer of an injury of (alleged date of injury), pursuant to Section 409.001; (5) that the claimant did not have disability as a result of the (alleged date of injury), injury because the claimant did not sustain a compensable injury on (alleged date of injury); and (6) as the alleged injury of (alleged date of injury), is not compensable, it is moot whether it extends to include concentric spondylosis at C4-5 and C6-7, mixed spondylitic protrusions at C4-5 or a neck sprain/strain. The claimant appealed, disputing the determinations that the _____, injury is a producing cause of the claimant's neck condition after (alleged date of injury); that she did not sustain a compensable injury on (alleged date of injury); and that she did not have disability as a result of the (alleged date of injury), injury. Respondent 1/cross-appellant self-insured (carrier 1 herein) also appealed, contending that the hearing officer's determinations regarding the producing cause of the _____, injury and that the claimant did not sustain a compensable injury on (alleged date of injury), are so against the great weight and preponderance of the credible evidence as to be manifestly unjust. Carrier 2 filed a response to both appeals, urging affirmance of the challenged determinations.

DECISION

Affirmed.

It was undisputed that the claimant sustained a compensable injury to her neck on _____, in a motor vehicle accident while working as a bus driver. The evidence reflects that the claimant had surgery on June 4, 2002. The claimant testified that she was released to return to work in September of 2002, and began working for another employer on September 30, 2002, as a truck driver. The claimant testified that on (alleged date of injury), she was injured as a result of bouncing in the truck during a scheduled trip. The dispute at the CCH centered around whether the _____, injury was a producing cause of the claimant's neck condition after (alleged date of injury), or whether the claimant sustained a compensable injury on (alleged date of injury). The hearing officer noted that there was medical evidence which reflected that the claimant continued to experience the effects of her 2001 injury from October 2002 through April 2003. The hearing officer was persuaded that credible evidence does not support a finding that the claimant sustained a second cervical spine injury in the course and scope of employment on (alleged date of injury).

The disputed issues presented questions of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a); Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). There was conflicting evidence presented on the disputed injury issues. It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). Nothing in our review of the record reveals that the hearing officer's determinations were so contrary to the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. As such, no sound basis exists for us to reverse those determinations on appeal. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). This is so even though another fact finder might have drawn other inferences and reached other conclusions. Salazar, *et al*. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). Without a compensable injury, the claimant would not have disability as defined by Section 401.011(16). Consequently, the hearing officer did not err in determining that the claimant has not had disability as a result of the injury of (alleged date of injury).

We affirm the decision and order of the hearing officer.

The true corporate name of insurance carrier 1 is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

The true corporate name of insurance carrier 2 is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

LEO F. MALO
12222 MERIT DRIVE, SUITE 700
DALLAS, TEXAS 75251.

_____
Margaret L. Turner
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Edward Vilano
Appeals Judge